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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th February 2006

No. 1706–li/1(SS)-3/2004(Pt.)-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th January 2006 in Industrial Dispute Case No. 6 of 2004 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial disputes between the management of M/s Golcha Pigments (P) Ltd., Kalunga, Rourkela and its workman Shri Manas Behuria was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 6 OF 2004

Dated the 24th January 2006

Present :

Sk. Jan Hossain, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Rourkela.

Between :

The Management of .. First Party–Management
M/s Golcha Pigments (P) Ltd.
Kalunga, Rourkela

And

Their Workman .. Second Party–Workman
Shri Manas Behuria
C/o Guru Charan Jena
R.I.T. College, At/P. O. Kalunga
Dist. Sundargarh.

Appearances :

For the First Party–Management	..	Shri G. Pujhari, General Secretary, Sundargarh District Employers Association.
For the Second Party–Workman	..	Shri Sanatan Biswal, Advocate Shri N. C. Mohanty, Advocate

AWARD

The Government of Orissa, in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 2690–li/1 (SS)-3/2004-L.E., dated the 15th March 2004 :—

“Whether the termination of services of Shri Manas Behuria by the management of M/s Golcha Pigments (P) Ltd., Kalunga with effect from the 14th February 2003 is legal and/or justified ? If not, what relief Shri Behuria is entitled to ?”

2. The second party workman joined the first party management M/s Golcha Pigments (P) Ltd., 115, Industrial Estate, Kalunga, Dist. Sundargarh on the 26th March 1989 as an unskilled worker. On the 1st April 1998 his service was regularised and he was in receipt of Rs. 2,171 per month towards his wages. He was entitled to Provident Fund, E. S. I., Bonus, leave and other benefits admissible to similar workmen of the first party management. He proceeded to his village on leave in December 2002. On the 18th December 2002 he suffered from viral hepatitis for which he got himself treated at the District Headquarters Hospital, Jajpur. He was declared fit by the Doctor who was treating him on the 13th February 2003 and on the 14th February 2003 he went to join and he was not allowed to join despite his contemporaneous approaches made from time to time. Finally, he approached the Union officials and the Deputy General Secretary, Sundargarh Industrial Mazdoor Union requested the management in letter, dated the 10th March 2003 to allow him to join but the same was not heeded to. The termination of service is arbitrary and illegal and is nothing but retrenchment as defined in Section 2(oo) of the Industrial Disputes Act. The workman then made an application before the Deputy Labour Commissioner, Uditnagar, Rourkela. The Conciliation Officer submitted failure report to the State Government wherein it was mentioned that the management did not file any reply or attend the proceeding. The State Government made a reference to this Tribunal vide its Order No. 2690-li-1-(SS)-3/2004-L. E., dated the 15th March 2004.

3. The management filed a reply to the claim petition and stated that the workman is in habit of absenting himself from duty without any permission or information thereto. His sudden unauthorised absence dislocated the normal functioning of the Plant and it became difficult to arrange substitute in his place. According to the management, in December, 2002 the

workman proceeded on leave for one week only and sent no intimation till end of February. In March, 2003 he reported at the gate and informed that he was sick for which he could not report for duty. He was advised to produce medical certificate declaring him fit. The workman left the gate with an assurance that he would come back with the medical papers and fitness certificate. It was denied that the service of the workman was terminated.

4. On the basis of the pleadings of the parties, the following issues have been framed for consideration :—

ISSUES

1. Whether the reference is maintainable ?
2. Whether the termination of services of Shri Manas Behuria by the management with effect from the 14th February 2003 is legal and/or justified ?
3. If not, what relief Shri Behuria is entitled to ?”

5. On the 19th January 2006 the workman gave his statement on oath and got marked Exts. 1 to 5. On behalf of the management Shri S. K. Panda appeared before this Tribunal and gave statement on the 20th January 2006. Exts. A, A/1 & B were marked for the management.

6. *Issue Nos. 2 & 3*—From the pleadings of the parties, the fact that the second party was appointed with effect from the 26th March 1989 as an unskilled workman. His service was regularised on the 1st April 1998 and that he proceeded on leave in December, 2002 has not been disputed. The witness Shri S. K. Panda, Accountant examined for the first party management in his evidence has stated that the workman proceeded on leave from 9th December 2002 for about a week and returned to duty on the 3rd March 2003. The Managing Director called him and enquired about his absence for such a long period and when the workman explained that he fell ill, the Managing Director instructed him to produce medical certificate declaring him fit. During cross-examination he stated that he was not present at the time of conversation between the Managing Director and the workman. He has admitted that the leave record maintained in the office is not filed. The evidence of management's witness as stands, the workman went to his village on leave. He returned to duty on the 3rd March 2003 and met the Managing Director. It is the assertion of the workman that his service was regularised on the 1st April 1998 and he was getting Rs. 2,171 per month. In December, 2002 he received a message from his house that his mother was ill. So he proceeded on leave. As he fell ill he could not able to come and join. He was treated in the Government Hospital, Jaipur from the 18th December 2002 to the 12th February 2003. After recovery he went to join with the certificate, Ext. 2 declaring him fit by the Doctor who treated him and he was not allowed to join. The management illegally retrenched him from service. The suggestion that was put while cross-examining him that he did not possess medical certificate declaring him fit and that he was informed through union to report to duty with medical certificate which he denied. There is nothing in his cross-examination which would weak his case. Needless to say in this case no opportunity was given to the workman and no enquiry was held.

7. In *D. K. Yadav Vrs. M/s J. M. A. Industries Ltd.* reported in 1993(67) F.L.R. 111, a three Judges Bench of the Apex Court while considering an identical issue observed that no opportunity was given and no enquiry was held. When the appellant reported to duty on subsequent days and expressed his readiness to join he was terminated from reporting to duty. In such circumstances the Apex Court held that the order of termination was violative of the principles of natural justice. The Apex Court directed reinstatement with back wages.

8. In the light of the above observation, the workman must be allowed to join his duty forthwith. The absence of the second party workman up till the date of his termination must be regularised in accordance with the Service Rules and all arrear benefits as on the date must be paid to him. As the management has not availed the services of the workman during the period from the 14th February 2003 till the date of passing of this Award, he is entitled to a lump sum amount of Rs. 6,000 (Rupees six thousand) only towards back wages. The back wages awarded be paid to the second party workman within a period of one month from the date of publication of this Award in the Official Gazette.

9. *Issue No. 1*—Although Issue No. 1 regarding maintainability of the reference was framed at the instance of the first party management, but in absence of any evidence on that score, I hold the reference to be maintainable.

Dictated and corrected by me.

Sk. JAN HOSSAIN
24-1-2006
Presiding Officer
Industrial Tribunal, Rourkela

Sk. JAN HOSSAIN
24-1-2006
Presiding Officer
Industrial Tribunal, Rourkela

By order of the Governor
N. C. RAY
Under-Secretary to Government